

" no carrier by railroad subject to this Act shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment " (par. 18) ; that when application for such a certificate is received the Commission shall cause notice thereof to be given to the Governor of the State wherein the line lies and published in newspapers of general circulation in each county along the line, and shall accord a hearing to the State and all parties in interest (par. 19) ; that the Commission may grant or refuse the certificate in whole or in part and impose such terms and conditions as in its judgment the public convenience and necessity require; and that when the certificate is issued, and not before, the carrier may, " without securing approval other than such certificate," comply with the terms and conditions imposed and proceed with the abandonment covered by the certificate (par. 20).

The Eastern Texas Railroad Company, a Texas corporation, owns and operates in that State a line of railroad 30.3 miles in length. Approximately three-fourths of the traffic over the road is in interstate and foreign commerce and the rest is in intrastate commerce. The company neither owns nor operates any other line. The road was constructed in 1902 to serve extensive lumber industries, but in subsequent years the adjacent timber was removed and the mills dismantled. The company claims that since 1917 the road has been operated at a loss.

On June 3, 1920, the company filed with the Commission an application for a certificate authorizing it to abandon and cease operating its road, full notice of the application being regularly given. The State declined to appear before the Commission, but others, who were being served by the road, appeared and opposed the application. A full hearing was had and, on December 2, 1920, the

Commission made and filed a report concluding as follows: "Upon consideration of the record we find that the present public convenience and necessity permit the abandonment of the applicant's line, and we further find that permission to abandon the line should be made subject to the right of persons interested in the community served to purchase the property at a figure not in excess of \$50,000. A certificate and order to that effect will be issued." The certificate and order were issued and the railroad company indicated its assent to the condition imposed, but, so far as appears, no one sought to purchase under the condition.

While the application was pending before the Commission and before the certificate was issued, the State brought a suit in one of its courts against the railroad company and some of its officers to enjoin them from ceasing to operate the road in intrastate commerce. The bill was brought on the theory that under the laws of the State the company was obliged to continue the operation of the road in intrastate commerce; that the provisions of the Transportation Act were unconstitutional and void, in and in so far as they authorized the abandonment of such a road as respects intrastate commerce, and that the company in asking the Commission to sanction such an abandonment was proceeding in disregard of its obligations to the State. At the instance of the defendants the suit was removed to the District Court of the United States for the Western District of Texas. During the pendency of the suit the Commission issued the certificate and the defendants then sought the benefit of it by a supplemental answer. The court held that the certificate constituted a complete defense, and without a hearing on other issues dismissed the suit. The State appealed directly to this court. That appeal is No. 298.

After the Commission granted the certificate the State brought a suit in the District Court of the United States

for the Eastern District of Texas against the United States, the railroad company and others to set aside and annul the Commission's order and certificate on the grounds, first, that the provisions of the Transportation Act, rightly interpreted, did not afford any basis for granting a certificate sanctioning the abandonment of the company's road as respects intrastate commerce, and, secondly, if those provisions purported to authorize such a certificate, they were to that extent in excess of the power of Congress and an encroachment on the reserved powers of the State. The defendants moved to dismiss the bill as ill founded in point of merits, and the court sustained the motions and entered a decree of dismissal. The State appealed directly to this court. That appeal is No. 563.

Counsel attribute to these cases a breadth which they do not have; and for obvious reasons we shall deal with them as they are, not as they might be.

Up to the time the Commission made the order granting the certificate a part of the commerce passing over the road was interstate and foreign, that is, was bound to or from other States and foreign countries. It is not questioned that Congress could, nor that it did, authorize the Commission to sanction a discontinuance of this interstate and foreign business. Neither is it questioned that the Commission's certificate was adequate for that purpose. The only matters in controversy are whether, by paragraphs 18, 19 and 20, Congress has assumed to clothe the Commission with authority to sanction the entire abandonment of a road such as this, and, if so, whether the power of Congress extends so far.

The road lies entirely within a single State, is owned and operated by a corporation of that State, and is not a part of another line. Its continued operation solely in intrastate commerce cannot be of more than local concern. Interstate and foreign commerce will not be burdened or affected by any shortage in the earnings, nor will

any carrier in such commerce have to bear or make good the shortage. It is not as if the road were a branch or extension whose unremunerative operation would or might burden or cripple the main line and thereby affect its utility or service as an artery of interstate and foreign commerce.

If paragraphs 18, 19 and 20 be construed as authorizing the Commission to deal with the abandonment of such a road as to intrastate as well as interstate and foreign commerce, a serious question of their constitutional validity will be unavoidable. If they be given a more restricted construction, their validity will be undoubted. Of such a situation this court has said, "where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter." *United States v. Delaware & Hudson Co.*, 213 U. S. 366, 407-408.

Although found in the Transportation Act, these paragraphs are amendments of the Interstate Commerce Act and are so styled. They contain some broad language, but do not plainly or certainly show that they are intended to provide for the complete abandonment of a road like the one we have described. Only by putting a liberal interpretation on general terms can they be said to go so far. Being amendments of the Interstate Commerce Act they are to be read in connection with it and with other amendments of it. As a whole these acts show that what is intended is to regulate interstate and foreign commerce and to affect intrastate commerce only as that may be incidental to the effective regulation and protection of commerce of the other class. They contain many manifestations of a continuing purpose to refrain from any regulation of intrastate commerce, save such as is involved in the rightful exertion of the power of Congress over interstate and foreign commerce. *Minnesota Rate Case*, 230

U. S. 352, 418; *Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563. And had there been a purpose here to depart from the accustomed path and to deal with intrastate commerce as such independently of any effect on interstate and foreign commerce, it is but reasonable to believe that that purpose would have been very plainly declared. This was not done.

These considerations persuade us that the paragraphs in question should be interpreted and read as not clothing the Commission with any authority over the discontinuance of the purely intrastate business of a road whose situation and ownership, as here, are such that interstate and foreign commerce will not be burdened or affected by a continuance of that business.

Whether, apart from the Commission's certificate, the railroad company is entitled to abandon its intrastate business is not before us, so we have no occasion for considering to what extent the decisions in *Brooks-Scanlon Co. v. Railroad Commission of Louisiana*, 251 U. S. 396, and *Bullock v. Railroad Commission of Florida*, 254 U. S. 513, may be applicable to this road.

As the District Courts both accorded to the Commission's certificate a wider operation and effect than can be given to it consistently with the provisions of paragraphs 18, 19 and 20 as we interpret them, the decrees must be reversed and the causes remanded for further proceedings in conformity to this opinion.

*Decrees reversed.*